

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAMES H. GORBNEY, JR.,
Administrator of the Estate of
Marissa Rose Fishman, Deceased,

Plaintiff,

v.

C.A. No. 05-211 MPT

RICHARD LONGWILL,
BARBARA LONGWILL,
ASHLAND CONSTRUCTION
COMPANY, INC.,
VINCENT RIZZO CONSTRUCTION
CO., INC., d/b/a Ashland Construction
Co., Inc., and VINCENT RIZZO,

Defendants.

**DEFENDANTS', ASHLAND CONSTRUCTION COMPANY, INC.,
VINCENT RIZZO CONSTRUCTION CO., INC. d/b/a ASHLAND
CONSTRUCTION CO., INC., AND VINCENT RIZZO,
PROPOSED JURY INSTRUCTIONS**

MURPHY & LANDON

/s/ Roger D. Landon

ROGER D. LANDON, No. 2460
1011 Centre Road, #210
Wilmington, DE 19805
(302) 472-8100

April 1, 2008

NATURE OF THE CASE

In this case, the plaintiff is Tim Gorbey, who, on behalf of the estate of Marissa Rose Fishman, is suing for damages resulting from an accident that occurred on August 30, 2002. As you have heard, Marissa Fishman was then twenty months old and was residing with her mother and siblings at the home of Richard and Barbara Longwill, her maternal grandparents. The Longwills had an enclosed swimming pool on the property, separated from the main interior of the home by a sliding glass door. The plaintiff claims that Marissa entered the pool area via the open sliding glass door, entered the pool and drowned, causing her death.

The plaintiff claims that the death of Marissa Fishman was caused by the negligent conduct of the defendants. The defendants are (1) Richard and Barbara Longwill, Marissa's grandparents and owners of the property where the accident occurred; and, (2) the defendants to which we've referred throughout this trial as "the Ashland defendants": Ashland Construction Company, Inc., Vincent Rizzo Construction Co. doing business as Ashland Construction Company, Inc., and Vincent Rizzo. Unless I instruct you otherwise, for purposes of your deliberations and verdict, you should consider the Ashland defendants essentially as one defendant.

The defendants deny that they were negligent in any manner that caused the death of Marissa Fishman.

The Ashland defendants claim that it was the unforeseen negligence of third parties over whom they exercised no control that caused Marissa Fishman's death.